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April 2, 2018

VIA ELECTRONIC FILING

Jocelyn Boyd, Esquire
Chief Clerk and Administrator
South Carolina Public Service Commission
101 Executive Center Drive
Columbia, SC 29210

RE: Application of Carolina Water Service, Inc. for Adjustment of Rates and Charges and
Modifications to Certain Terms and Conditions for the Provision of Water and Sewer
Service
Docket No. 2017-292-WS

Dear Ms. Boyd:

Enclosed please find for filing the surrebuttal testimony of witness Michael R. Cartin on behalf of Carolina Water Service, Inc. in the above-referenced docket.

By copy of this letter, I am serving all parties of record.

If you have any questions or if I may provide you with any additional information, please do not hesitate to contact me.

Sincerely,

Elliott & Elliott, P.A.

Scott Elliott

SE/mlw

Enclosures

cc: All parties of record w/enc.

**THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

DOCKET NO. 2017-292-WS

In the Matter of)	
)	SURREBUTTAL TESTIMONY
Application of Carolina Water Service,)	
Inc. for an Adjustment of Rates and)	OF
Charges and Modifications to Certain)	
Terms and Conditions for the Provision of)	MICHAEL R. CARTIN
Water and Sewer Service)	

1 **Q. ARE YOU THE SAME MICHAEL CARTIN THAT PREVIOUSLY FILED**
2 **DIRECT AND REBUTTAL TESTIMONY IN THIS CASE?**

3 **A. Yes.**

4 **Q. HAVE YOU REVIEWED THE SURREBUTTAL TESTIMONY FILED BY ORS**
5 **WITNESS SCHELLINGER?**

6 **A. Yes.**

7 **Q. DO YOU HAVE ANY CONCERNS WITH MR. SCHELLINGER'S TESTIMONY?**

8 **A. Yes.** I believe the proposed tax adjustment in Revised Surrebuttal Exhibit MPS-5 of Mr.
9 Schellinger's testimony used to adjust revenues and rate base for the impact of the Jobs and Tax
10 Reform Act of 2017 (Tax Act) from January 1, 2018 to May 10, 2018 (Estimated Revenue
11 Adjustment Period) is inappropriate.

12 **Q. WHY IS IT INAPPROPRIATE TO MAKE THIS ADJUSTMENT?**

13 **A. ORS'** adjustment considers one effect of the Tax Act in a vacuum. The adjustment does
14 not consider other costs and expenditures the Company has or will experience during the Estimated
15 Revenue Adjustment Period. For example, increased purchased water and sewer expense due to
16 rate increases from York County of approximately 25% and 29% for water and sewer respectively.

In addition, the adjustment is based on estimated revenues that are not fully known and measurable prior to the hearing date.

Q. DOES ORS' ADJUSTMENT RAISE OTHER CONCERNS?

A. Yes, the adjustment would result in impermissible retroactive ratemaking. ORS is essentially asking the Commission to refund previously approved rates. In *South Carolina Electric & Gas Co. v. Public Service Commission*, 275 S.C. 487 (1980) our Supreme Court held that a similar adjustment constituted impermissible retroactive ratemaking. In that case, the Commission had ordered SCE&G to refund more than seven million dollars to its customers because of lower than anticipated purchased power expenses. The Supreme Court reversed, holding that the Commission did not have the authority to order refunds. The Supreme Court held the Commission did not have the authority to order refunds except in certain narrowly prescribed circumstances. It explained that ratemaking is a prospective exercise, and the refund (which the Commission called an "extraordinary expense adjustment") amounted to impermissible retroactive ratemaking. The Supreme Court explained the logic of the rule of retroactive ratemaking:

The result reached here may initially appear unjust to the retail customer and unduly generous to SCE&G. This is not the case. The crux of this issue is the firm principle that rate-making is prospective rather than retroactive. The Commission has no more authority to require a refund of monies collected under a lawful rate than it would have to determine that the rate previously fixed and approved was unreasonably low, and that the customers would thus pay the difference to the utility.

275 S.C. at 491.

I have attached a copy of the Supreme Court's opinion as Surrebuttal Exhibit MRC-1.

Q. WHAT IS THE EFFECT OF ORS' PROPOSED ADJUSTMENT ON THE COMPANY'S ABILITY TO EARN ITS ALLOWED RATE OF RETURN?

A. The adjustment would not allow the Company the opportunity to earn its allowed return. The Company has proposed in testimony to set rates on test year revenues and expenses (as updated through the audit cut-off period), including all known and measurable impacts of the Tax Act. The Company would need to have been over-earning during this time to trigger a refund to our customers. ORS' own exhibits show the Company is not over-earning. ORS' financial exhibits show the Company was earning below a 4% ROE after its accounting and pro forma adjustments. According to Revised Audit Surrebuttal Exhibit ZJP-2, the Company's Net Income for Return on Rate Base "After Accounting & Pro Forma Present" adjustments is \$2,686,794 less Interest Expense of \$1,712,921 equals \$973,873. The Total Rate Base is \$54,110,690 per the exhibit. At the proposed capital structure of 51.89% equity to 48.11% debt, the resulting ROE earned is 3.47%.

Q. WOULD ORS' PROPOSED ADJUSTMENT BENEFIT THE CUSTOMERS?

A. No. Any benefit would be illusory. CWS has acknowledged that its customers should benefit from the new income tax reductions, and the Company went to great lengths to calculate and propose reasonable adjustments in this Application. ORS' adjustment, on the other hand, would not benefit ratepayers. By unjustifiably depriving the Company of revenue from previously approved rates, it will only accelerate the Company's need for future rate relief.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

275 S.C. 487 (1980)

272 S.E.2d 793

SOUTH CAROLINA ELECTRIC AND GAS COMPANY, Appellant,**v.**

The PUBLIC SERVICE COMMISSION of South Carolina, Daniel R. McLeod, as Attorney General of South Carolina, Midlands Welfare Rights Organization, People Are Coming Sponsoring Committee, Roy W. Smith, Holly Hill Lumber Company, Inc., and Gifford-Hill Company, Inc., Defendants, The Public Service Commission of South Carolina Daniel R. McLeod, as Attorney General of South Carolina, Midlands Welfare Rights Organization, People Are Coming Sponsoring Committee, and Roy W. Smith are Respondents.

21345**Supreme Court of South Carolina.**

December 8, 1980.

488 *488 *Hubert E. Long*, Lexington and *Patricia T. Marcotsis* and *James B. Richardson, Jr.*, Columbia, for appellant.

Robert T. Bockman, *Arthur G. Fusco*, Atty. Gen., *Daniel R. McLeod*, Asst. Atty. Gen., *James W. Johnson, Jr.* and *Robert Guild*, Columbia; *Tom Turnipseed*, West Columbia, for respondents.

Roy W. Smith, pro se.

December 8, 1980.

NESS, Justice:

The critical question in this appeal is whether the South Carolina Public Service Commission has authority to require a public utility to make a general refund to its retail customers. We conclude it does not.

Appellant South Carolina Electric & Gas Company (SCE&G) was ordered by the Public Service Commission to refund more than seven million dollars to its retail electric customers as a result of the interchange of power during the first six months of 1976 and 1977. The "interchange of power" is the sale and purchase of energy between SCE&G and other energy producers.^[1]

489 *489 The circuit court affirmed the refund order of the Commission. We reverse.

Our scope of review of Commission orders subsequently affirmed by the circuit court is limited. Findings of the Commission are presumptively correct, and have the force and effect of law. They will not be reversed by us unless they are without evidentiary support embody caprice or error as a matter of law. *Southern Bell Telephone and Telegraph Company v. Public Service Commission*, 270 S.C. 590, 244 S.E. (2d) 278 (1978); *Greyhound Lines, Inc. v. S.C. Public Service Commission*, S.C. , 262 S.E. (2d) 18 (1980).

In affirming the refund order, the circuit court held the Commission acted within the scope of its general powers set forth in S.C. Code § 58-27-140 (1976). We disagree.

Section 58-27-140 provides, *inter alia*, that the Commission may: "[a]scertain and fix just and reasonable standards, classifications, regulations, practices or services to be furnished ... by any or all electrical utilities." While the Commission is vested with broad power to carry out its responsibilities to the public and to the utilities, that authority is not unlimited. In *Piedmont & Northern Railway Co. v. Scott, et al.*, 202 S.C. 207, 24 S.E. (2d) 353 (1943). we recognized that as creatures of statute, regulatory bodies are possessed of only those powers which are specifically delineated:

"As applied to both State (citation omitted) and Federal (citation omitted) legislation creating regulatory bodies to govern transportation, the Supreme Court of the United States has pointed out that *asserted powers are not to be derived from*

mere inference. They must be founded upon language in the enabling acts which admits (*sic*) of no other reasonable construction.

490 "Such bodies, being unknown to the common law, and deriving their authority wholly from constitutional statutory *490 provisions, will be held to *possess only* such powers as are conferred expressly or by reasonably *necessary* implication, or such as are merely incidental to the powers expressly granted. See 51 C.J. 36, 37, where among other things it is said: 'Any reasonable doubt of the existence in the Commission of any particular power should ordinarily be resolved against its exercise of the power.'" (Emphasis supplied.) 202 S.C. at 223-224, 24 S.E. (2d) at 360.

Our legislature has empowered the Commission to prescribe refunds in *only* two specific instances. Pursuant to Code § 58-27-880, it may order a refund for the difference between new rates under bond and those ultimately found to be just and reasonable by the Commission. Additionally, the Commission may order a reparation for a past charge in excess of the applicable rate under Code § 58-27-960. Neither of those situations is present here.

We are not persuaded by the fact the Commission referred to the refund here as an adjustment for extraordinary operating expenses. Semantics aside, the Commission's action constituted retroactive rate-making. The rates for 1976 and 1977 were set and approved as reasonable by the Commission, yet in its refund order, the Commission sought to reduce those past-approved rates. Ratemaking is a prospective rather than a retroactive process.

Here, appellant's retail customers were paying rates which had been previously approved by the Commission. "[N]o order for the payment of reparation upon the ground of unreasonableness shall be made by the Commission in any instance wherein the rate — has been authorized by law." S.C. § 58-27-960 (1976). The Commission simply does not have any implied power to award refunds in the nature of reparations for past rates or charges; such power must be expressly conferred by statute. Hope Natural Gas Co. v. Federal Power Commission, 196 F. (2d) 803 (4th Cir.1952); Atlantic Refining Co. v. Public Service Commission, 360 U.S. 378, 79 S.Ct. 1246, 3 L. Ed. (2d) 1312 (N.Y. 1959); New Rochelle Water Co. v. Public Service Commission, 31 N.Y. (2d) 397, 340 N.Y.S. (2d) 617, 292 N.E. (2d) 767 (1972).

The result reached here may initially appear unjust to the retail customer and unduly generous to SCE&G. This is not the case. The crux of this issue is the firm principle that rate-making is prospective rather than retroactive. The Commission has no more authority to require a refund of monies collected under a lawful rate than it would have to determine that the rate previously fixed and approved was unreasonably low, and that the customers would thus pay the difference to the utility.

Rather than engaging in retroactive rate-making, the proper approach for the Commission is to consider these extraordinary monies in setting the test period operating experience when a future rate increase is requested. This method falls within the parameters of the Commission's rate-making authority; the ordering of a general refund does not.

As the legislature has expressly authorized refunds in two specific instances, it is both reasonable and logical to conclude that no general authority to direct refunds was intended to be placed in the Commission. We conclude the Commission exceeded its statutory power in ordering SCE&G to refund more than seven million dollars to its retail customers, and the trial court erred in affirming the order.

Respondents Midlands Welfare Rights Organization, People Are Coming, and Roy W. Smith's additional sustaining ground was the subject of a previous appeal which was abandoned, and is without merit. In view of our disposition of the case, it is unnecessary to reach appellant's remaining exceptions.

492 *492 We reverse the order of the circuit court, thereby setting aside the commission's refund order.

Reversed.

LEWIS, C.J., and LITTLEJOHN and HARWELL, JJ., concur.

GREGORY, J., not participating.

[1] During the first six months of 1976, SCE&G purchased power at a cost of 3.4 million dollars; during the same period in 1977, SCE&G sold energy for 4.2 million dollars. The Commission's seven plus million dollar refund represent the percentage of SCE&G's business devoted to retail sales (92.6%).

CERTIFICATE OF SERVICE

The undersigned employee of Elliott & Elliott, P.A. does hereby certify that she has served below listed parties with a copy of the pleading(s) indicated below by mailing a copy of same to them in the United States mail, by regular mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

RE: Application of Carolina Water Service, Inc. for Adjustment
of Rates and Charges and Modifications to Certain Terms
and Conditions for the Provision of Water and Sewer
Service
Docket No. 2017-292-WS

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PLEADINGS: SURREBUTTAL TESTIMONY OF MICHAEL R.
CARTIN

April 2, 2018



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